

# **U.S. Small Business Administration**

**Regulatory Enforcement Fairness Hearing**

**Los Angeles, CA**

**June 14, 2007**

## **PROCEEDINGS**

[START TAPE LOSANGELES HEARING]

**OPERATOR:** A recorder joined.

**MR. ALVARADO:** Are we on there, connected to headquarters?

**MR. MENDEZ:** Correct, Alberto.

**MR. ALVARADO:** Okay. Good, Jose. Let me refer all of you to the agendas in your packet. They call him the \$6 billion man because his region, Region 9, of the SBA leads the country in financing the most small businesses; leading the nation in the process in assisting dynamic market communities, minorities, women, veterans. This man, more importantly, gets it because he's been a businessman in at least four different industries. He's been a California State Legislator and now he's one of the most accomplished managers in the Small Business Administration. I have to tell you, in all honesty, his most challenging management assignment has been supervising me. And I'll tell you I had a full head of hair before he became my supervisor so you can see he's doing a pretty good job of keeping me in line. Ladies and gentlemen, the best boss I've ever had, I'm pleased to present to you Regional Administrator, Bruce Thompson.

**MR. THOMPSON:** Thank you, Alberto. When I first came on board, my hair was brown and I had plenty of it. So you can see what happens when I have to manage Alberto.

This is, I think, I've been to, Nick, probably a half dozen of these in my region and we appreciate you coming from Washington and, of course, the Board members that are here, thank you also.

Today is Flag Day in the United States, a more appropriate day than talk about how, as a federal government, we can improve and we appreciate you being here to help us find out how we can improve as the government. Let me just say that this is the largest crowd I think we've had in my region. Is that not correct, Nick?

**MR. OWENS:** I think you're right.

**MR. THOMPSON:** Okay. Well, Alberto, are you satisfied now? We're number one again. You had the--

**MR. ALVARADO:** [Crosstalk] thank you very much.

**MR. THOMPSON:** So let me turn it back over to Alberto Alvarado, our District Director here in the largest number one district in the country. Albert, Alberto.

**MR. ALVARADO:** Thank you. Thank you. The good thing about the fact that this forum is being taped is now I got my boss saying good things about me. I'll remind him come my evaluation, if I make the next one.

Welcome to our house, your home; SBA's Los Angeles District Office. Our staff is gratified to serve one of the most dynamic business communities in the country. Over the past three years, we financed well over 15,000 businesses for about \$3 billion. We trained or counseled over 120,000 entrepreneurs and facilitated more than \$1 billion in government contracts. How about a round of applause for that record.

**MS. KING:** Bravo.

**MR. ALVARADO:** And today we're excited to host this regulatory fairness forum. We thank all of you for your presence. We're delighted to see you here. Thank you for the commitment that you have to this community such that you've taken time from your busy schedule to come and articulate concerns that you have. And we thank you for providing us the opportunity to serve you yet again.

Our staff here is at your disposal. And even if you're concern today results in the articulation of something that may not have been done exactly quite right, and we're talking about concerns relative to the entire federal government, we assure you we'll begin the process today of correcting those items.

It is now my honor and high privilege to introduce you to our National Ombudsman, Nick Owens. And he's our handsome National Ombudsman. [Laughter] Ombudsman Owens was appointed to his post in March of last year [break in audio] fifth Ombudsman. I will let him explain what Ombudsman means. Suffice it to say he's doing a remarkable job in his assignments. He's a man of action. He, too, is a former businessman in the media industry, public affairs, government relations.

He's been called the Great Mississippian for the next generation. And we're lucky because we don't have to wait for the next generation because the Great Mississippian has come to LA, to Glendale, to hear your ideas, your concerns and this is something quite novel, to hear your solution to some of the challenges. He's come to inform us of federal government efforts to address some of those challenges. And he's come to us really to facilitate a better way. Ladies and gentlemen, it's our honor to have you with us and to present to you National Ombudsman Nicholas N. Owens.

**MR. OWENS:** Certainly, you have a terrific District Director, but he's very gracious with his comments; too gracious. In fact, I was in Richmond, Virginia just a few weeks ago and the District Director there said well we're here for a roundtable and after seeing Nick, I can see why it's called round. So I don't know about the handsome comment.

But, anyway, it is indeed a privilege to be here. It's my first time to be in Los Angeles since being appointed as the National Ombudsman just in 2006. But with that, we have three distinguished

Board members here who are appointed by the Administrator of the SBA. It's important for me to get up out of the beltway in Washington, but it's very important that we have a local Regulatory Fairness Board members who are small business owners, officers and operators who focus on your issues and your interests. First I want to defer, before I begin my remarks, to the distinguished Board to Chairman, Kim King. Thank you.

**MS. KING:** Welcome, everyone. Can you hear me? I'd like to thank all of you for coming. I'm Kim King. And I'm the Chair of Region 9 for the Small Business Regulatory Enforcement Board. I own and operate a small business in San Francisco doing security guard [break in audio] and consulting. I have been on the Board for [background noise] years. And we are volunteers. The Board members are volunteers. We're a volunteer [background noise] all around the country and our goal is to help small business owners and helping them when they have issues with federal agencies, when they feel that they are perhaps not treated fairly with those agencies. I'm going to have my other Board members introduce themselves and then we will also let you know who is here from the other federal agencies that will be listening to what your comments that you have today and making introductions so you will have an outlet of where to go to, who to go to help in your quest for ending or finishing or completing your issues that you have with the federal agencies. First, here's Zainul.

**MR. ABEDIN:** Good morning. I'm Zainul and -- Zainul Abedin. I joined this Board last year and also, particularly, I'm also in a small business [break in audio] and lucky this time my business is right up the next street from here. And so it is like to be here and I go outside this Region, too, but this time it happens to be in my hometown. And also welcome all of you.

And I also run, since I run a small business, my concern how I'm going to grow my businesses. So I have a feeling one of the points where I need to help from the other departments, other organizations. And this is one of the ways I can assist, all my experience come into play being a member in this Regulatory Fairness Board. How federal regulations are affecting the honest small businesses. Small businesses meets the big businesses of the United States and being a small business owner, I think the experience of the small business owner is always a very direct and very right on the spot. That is one other thing I am trying to contribute here. And with this thing, I'd like to pass the mic to my other colleagues. And thank you and welcome all of you. We like to hear your points.

**MR. REYES:** Thank you very much. I also just want to welcome everybody that's here. I want to say that different than most people think; great ideas don't necessarily always come from Washington, DC. Most of the time, they come from right here in the community. And it's very important that we listen to your comments;

that we listen to the kinds of issues and the barriers that you may have as you move about your day trying to make your business a success. You know, government really works if you have an understanding that the government really is of the people and that you are very much a part of it and you're good people so it's got to be a good government. And we're here with nothing more than the interest to see how we can make it better for you. There are many different agencies for your convenience to guarantee your success. But they're not any good to you unless they work in a way that is responsive and really congruent to your needs. And that's why we're here today. We want to make sure that you feel comfortable.

I am the humblest of all small business entrepreneurs. I have been a lender and a mortgage person, mortgage banker and real estate professional for over 33 years and really understand the issues when it comes to what are some of the difficult things in communicating with some of the agencies that we have to comply with. So by all means, feel comfortable to tell us what it is that you need; where does it hurt and we're going to make sure that Nicholas goes back to Washington, DC and represents you in a way that you're worthy. Thank you.

**MS. KING:** We have three federal agencies with us today represented and one state agency. So I will introduce them and have them stand up so that you can see who they are once the meeting is over, if you'd like to talk to them. With the IRS, we have Stephanie Harrison Colbert [phonetic].

**MS. HARRISON COLBERT:** [Unintelligible] not of the IRS.

**MS. KING:** Oh, okay. Perhaps you can stand up and introduce yourself.

**MS. TANDER:** I'm Sharon Tander [phonetic] [unintelligible]

**REGINA:** Regina [inaudible].

**MR. VAN:** I'm Derek Van [phonetic].

**GREG:** I'm Greg [inaudible] as part of the IRS. I'm assigned to the Washington, DC office but they allow me to work the office in LA so I can go home every night.

**MS. KING:** Thank you. From the Equal Employment Opportunity division, can you stand up and introduce yourself, please.

**MALE VOICE:** I'm [inaudible] manager of the Los Angeles District Office.

**MS. KING:** Thank you. And from the USDA. Mr. Sweet [phonetic].

**MR. SWEET:** My name's Commander Philip Sweet [inaudible].

**MS. KING:** Thank you. And we also have somebody from the state, from the Department of Industrial Relations, Hassan [phonetic].

**MR. AVAN:** Yeah, my name is Hassan Avan [phonetic]. I am a District Manager [unintelligible] Los Angeles office [break in audio] California, representing here my Deputy Chief.

**MS. KING:** Are there any other federal and state agencies represented?

**MS. BARENKO:** By phone.

**MS. KING:** Please.

**MS. BARENKO:** Can you hear us?

**MS. KING:** Yes.

**MS. BARENKO:** This is Angela Barenko [phonetic] with the US Environmental Protection Agency, the Small Business Advocate in the Regional Compliance and Enforcement Program.

**MR. SCHRUFFLER:** Also, this is Michael Schruffler [phonetic] from Office of Trade Relations at US Customs and Border Protection.

**MR. HALL:** And Michael Hall from the Office of Advocacy. I'm the Regional Advocate for Region 9, based out in Arizona.

**MR. MILLER:** Mike Miller from the Centers for Medicare/Medicaid Services in Baltimore, Maryland.

**FEMALE VOICE:** My name is [inaudible] Smith. I'm coming from Washington, DC, Department of Labor, the Office of Small Business Programs. We work in [unintelligible] records for compliance and [break in audio].

**MR. TURNER:** And I'm Brian Turner [phonetic] from U.S. Department of Labor and Wage Hour Division in Los Angeles.

**MR. ALVARADO:** Madam, Chair. I'm sorry.

**MR. SCOLEY:** Marcus Scoley [phonetic] with Federal OSHA here in Region 9.

**MR. ALVARADO:** Madam Chair, we have the distinguished Marty Keller [phonetic], the Governor's Small Business Advocate with us. He asked to be put on the firing line for a minute or two and maybe you could assume the position there at the microphone and bring us the good wishes of the Governor.

**MR. KELLER:** I appreciate the opportunity to be here. I'm 19 days on the job so I'm here to learn and ultimately learn how we can partner. Thank you.

**MS. KING:** Thank you everyone for introducing yourselves. And now I'll turn it back to our distinguished Mr. Owens.

**MR. OWENS:** I guess we have a mic here; pretty functional here. Regional Administrator Thompson, thank you for hosting this hearing, Regional Regulatory Fairness Hearing, here in Los Angeles.

Of course, District Director Alvarado, thank you for your leadership here in the Los Angeles area.

I can tell you as I have surveyed the current entrepreneurial and small business climate across our country, there has never been a more exciting time to be a part of America's small businesses. And as the National Ombudsman, I'm thrilled to have the opportunity to be here, to hear first hand the concerns that you have regarding federal regulations, concerns of the government contractual issues or concerns about having the small business become a successful business and continue to grow. And most of all, the role that you play in today's ever-changing and dynamic marketplace is important.

The state of America's 25 million small businesses is stronger than ever before. And that's representing 99.7% of all businesses in the country. And, of course, it's because of the leadership and the recognition that America's small businesses are the country's economic engine. Our economy is realizing tremendous growth and jobs are being created. But with opportunity of success and many businesses here represent success and have started out with a lot of hard work and have been able to succeed. But you also know with success, you also have challenges and that's regulatory and compliance challenges. And the ingenuity of any small business owner in this room did not come from the federal government; did not come from Washington, DC. And often when we say we're here from the government and we're here to help you, makes you want to head out the door. But I don't want you to do that quite yet. But we are, indeed, the resource for you here in Washington, here in California and in Washington to represent your issues and your interests.

President Bush has said many times that the role of government is not to create wealth. The role of government is to create an environment where the entrepreneurial spirit can flourish. You can risk capital and you can achieve the American Dream. But the President also knows that unfair regulations and the unfair enforcement of regulations are an issue for small business today. And I can tell you his agenda is focused on small business, coupled with our Administrator's leadership, Administrator Steve Preston who I bring greetings from. And also, when I was telling him about this hearing, he said now, Nick, I know you well enough. You should just talk about five minutes. But I'll try to give you a little bit more than that. But I will tell you that we're committed, from our agency standpoint to the President's agenda, on the issues of small business and regulatory fairness.

The issues I work on sometime relate to the gotcha attitude that you sometime find in the enforcement environment of regulations. We've been focused on streamlining regulations, recognizing that small businesses can't operate in environment where there's uncertainty and confusion, even more so when you're faced with excessive penalties or

unfair and burdensome compliance issues. And examples of that may be a fine, excessive penalty, retaliation concerns or you're concerned about retaliation to a federal agency if you express concern about their actions. Also onsite inspections, investigations, a repetitive investigation are an issue for small business.

I often say and remind our staff that our job in the Office of the National Ombudsman is to help small business owners keep more of their hard earned money in their pocket, in your pocket to decide what to do with it. And the unfair regulations and the unfair enforcement of regulations costs you two of your most precious commodities and that's your time and your money. So I appreciate you most of all taking time out of your day to be here and to share your concerns. I appreciate Mike Hall who is your Regional Advocate, who's on the line listening, who's a terrific Advocate for this Region and works closely with the Chief Counsel for Advocacy in Washington, Tom Sullivan.

And, according to SBA's Office of Advocacy, it's estimated that small businesses spend \$7,647 per year, per employee. That is about, I'd say, for about 20, we'll say 20 employees or less compared to your counterparts of 500 employees or less. That's a significant number. And it often represents that the very smallest firms pay 4.5 times, spend 4.5 times to comply with environmental regulations; 67% more to comply with tax regulations. And it may be related to the issue you can't afford super lobbyists, super accountants and consultants to represent your issues and your interests.

And I often travel the country and I hear the three priorities for a lot of small businesses are impacting them are healthcare costs, regulations and taxes. So these, certainly, are issues where we're focused. And the money that you spend on unnecessary regulations or unfair enforcement could be better spent perhaps to provide health coverage for your employees; to expand the infrastructure of your business and to continue to grow your business.

At our office, as you testify here today and you comment, what's going to happen? I act, I have the longest title in the agency, sometime I get kidded by the boss, and National Ombudsman Assistant Administrator for Regulatory Enforcement Fairness. All that means is troubleshooter or problem solver. And that's our job. And I act as a troubleshooter, as I liaise on your behalf with all federal agencies. I'm based at the SBA. I do serve, if you have issues regarding the SBA, to take those back to our agency, but also to any federal agency. So I act as a troubleshooter.

And today, your comments here, we will work and liaise on your behalf for a high level, senior review with the federal agency be it Center of Medicaid Services, Medicare/Medicaid Services, EPA, IRS, Department of Labor. And we ask for a high level, senior review. If you have a concern regarding a certain action, it should not go back to that enforcement officer. It should be a leadership in the agency to



review and to ensure fairness. And that's what we seek to make sure that there's fairness in the action. Not only do we assist small businesses, but also small non-profit organizations which, I know, are represented here today, and small government entities. When our office cannot assist with an issue that doesn't relate to an enforcement action, it may be a proposed rule that you realize is going to impact your business or your industry. That's where we work closely with our Office of Advocacy. So, certainly, feel free to bring those concerns to our attention.

For a little history, Congress created our office in 1996, part of the Small Business Regulatory Enforcement Fairness Act. That came out of a White House conference President Clinton held in 1995. And small businesses said look, we don't have a voice. We have no where to go to navigate the federal bureaucracy. So hence the Office of the National Ombudsman was created. And with that ten Regional Regulatory Fairness Boards, which are small business owners, officers, operators dedicating their time to be a part of this process and represent your issues. We hold about 20 to 25 hearings and roundtables throughout the country. Because, as I said, it's important for me to get out of the vacuum of Washington and to listen to and learn from and better understand the concerns impacting small business.

One important aspect of our job is accountability. Of course, to my boss, the Administrator, but also to the United States Congress who, certainly, have a keen interest on issues of small business. And I rate federal agencies in an annual report to Congress, A to F, on their responsiveness to small business concerns. I will say federal agencies are doing a better job. Do we have more to do? Yes, we do. And I will tell you in our report, we rate on timeliness, quality of response. If they truly address your issue; do they delve into the details or was it a form response. So we want to make sure that you have a fair response and that they're doing a good job in addressing your concerns. Also retaliation; they have non-retaliation policies in place. Do they have compliance assistance resources? When federal agencies produce certain rules and regulations, they're to also provide small entity compliance guides. So we want to make sure that took place and available for you.

I'm energized by the success that we have been able to accomplish just in my time of about a year and six months on the job at the SBA. I can't promise 100% positive resolution to every issue, but you will be guaranteed 100% of our effort. And on the line from Washington is our great team in the National Ombudsman's office who also are focused on your issues here today.

A recent economic impact study said that our office has saved upward of \$229 million in regulatory enforcement and related costs. That's substantive real numbers was impacting small businesses. And I could tell you, I've had folks on the line that's been their peers with a

\$25,000 penalty, \$100,000 fine or even \$1,500 and what that would mean to layoffs or their business; growing their business and concerns. So it's truly rewarding work, I'll tell you.

I want to give you a few examples of issues, just to give you a cross section throughout industries from a grocery store to a mining operation to a brew pub, if you will. In Seattle, there were three grocers that testified at a hearing just like this and said that the USDA Office of Food Nutrition Service, alleged they committed fraud with their food stamp program. In that certain community, food stamps is a vital part of the fabric of sustenance for the families in that area. So they testified at that hearing. We brought that back to Washington and liaised with USDA on the concern; sought a high level review. Well they fulfilled their obligation and they realized they made a mistake. And they reversed that decision. So that meant a lot for those small grocery stores in Seattle.

In Maine, there was a small mine and safety -- small mining operation that MSHA, which is the Mine Safety Health Administration part of DOL, Labor Department, said that they had not filed their reports with the Department of Labor on time, alleging that they just did not file them. Well the small business said we did file them. And that's another issue. You can be faced with penalties for similar situations. With that, they contacted our office. We worked with the DOL and they realized they did receive them and, in fact, not only was the penalty overturned, the Assistant Secretary of the Department of Labor, Dominique Tier [phonetic] with Department of Labor was well aware of that. The Assistant Secretary called that small business owner to personally apologize.

In Illinois, there was a small brew pub that testified, well the brew pub owner testified, that he had a dispute with the Office of Wage and Hour with an issue that the brew pub master or the brew master, rather, should be hourly and not salaried. Well that was a business decision with that local businessman and his employee. That small business spent over \$7,000 battling it out, and his opinion, with the Department of Labor. He contacted our office and we were able to soon seek an equitable settlement. So that really means a lot for these businesses.

Another instance in Georgia; there was a small shipping company that spent \$2,000 for an alleged violation of Import/Export regulations. There's a lot of that business, of course, here in California. And I have many cases, in fact, from California on import/export issues. And that was an issue where they said that [break in audio] with that; faced with a penalty. It was overturned when U.S. Customs realized they had an inadvertent error.

There are other issues that we work on. And I can go on and on with success stories. One was an issue about a label that it was a peelable label and once an inspector had reviewed it, they determined it

was okay. Another inspector reviews and says well that's not okay. So he was faced with penalties and seizing cargo. And that's impacting the small business. So we're working that case now.

Many, many cases and many of your issues may relate to contractual issues. We address those with our Office of Government Contracting as well as Procurement Officials throughout the government.

What I do want to do, that's the regulatory fairness side. Other issues, we're making progress at SBA, I'd like to share with you and the focus of our Administrator Steve Preston. Administrator Preston often says that ensuring small businesses gets federal contracts is not just an issue of fairness, it's also an issue of good business. And small business, as we know, perform well as suppliers to government across the country. The size of the small business makes them flexible, innovative and more competitive sometime than the larger counterparts.

In order to help small businesses secure government contracts, federal agencies have goals for small business procurement. SBA annually negotiates with federal agencies on an individual basis on these goals and that being, of course, in the federal agency, excuse me, of the federal government of being 23%. The agency is committed, I'll tell you, to maintaining an environment where small businesses will flourish. You can truly enter them in the federal marketplace and with that as equal competitors with your larger counterparts.

There are changes, I will tell you, coming to the government contracting area for the agency to make sure there's more transparency, more accountability among federal agencies and small businesses. In order to provide a fair yet a competitive procurement environment for small business, we're driving a higher level of accuracy in the data and in the numbers, the federal contracting data. Also issuing a new regulation to ensure small business contracts are, in fact, going to small businesses and not to large businesses; bringing greater transparency to the quality of the effort federal agencies are putting into their small business procurement programs.

On the issue of data accuracy, I'll tell you Administrator Preston issued a letter, a memorandum, with the head of the Office of Federal Procurement Policy several months ago to federal agencies requiring them to update their data; review their data; make changes on the 2005 procurement data and identify changes to eliminate confusion and inaccuracies in the database going forward. With millions of contracting actions each year, agencies will need to certify the accuracy of this information. This change will be necessary to ensure there's a high level of data integrity for future years to come and even sooner, to have transparency in this process.

This month, June 30<sup>th</sup>, effective, we'll begin a recertification process for small business contracts. This will be, as you know,

previously the size of small business was determined at the time the firm presented a proposal for a contract and the classification was good for the life of the contract, even if the business grew to become very large or to be acquired by a larger firm. Under the revised regulation, which will be June 30<sup>th</sup>, it'll be effective, small businesses will be required to demonstrate that they are still a small business at the end of the first five years of a long term contract, or when a subsequent contract option is exercised. In addition, when a small business is purchased by a larger business, its contracts will no longer qualify as small business. So that's to make sure that we have quality and integrity and, certainly, accountability in our procurement process.

Score card is another area. Administrator Preston often says what gets measured, gets managed. And we've implemented a small business procurement score card. This will measure all federal agencies on their small business contracting performance and grade them on their performance and the ratings will be made public. It will allow each agency to tell the full story of what they're doing to move toward full end compliance with the goals for 23% for small business contracting. So if more accurate data, tighter certification requirements and transparent progress ratings will certainly allow us to focus more on having a fair share of government contracts going toward small business.

There are a number of other areas where our SBA District Office is involved with small business. I want to touch on those. These changes will reflect a better way for small business to do business with the government. But there are many other resources that we have in the world of government procurement for small business.

The Hub Zone [phonetic] program is designed to provide federal contracting preferences to small businesses in markets where there's higher unemployment or poverty levels and often, in urban and rural areas. The Hub Zone program's an important tool we have to support our efforts to invigorate entrepreneurship and communities in many areas where folks have been left behind.

In addition, the SBA administers two particular business assistance programs. That'll be the 8(a) Business Development and the Small Business Disadvantage, Small Disadvantaged Business Certification program. The 8(a) program offers a broad scope of assistance to socially and economically disadvantaged firms such as our Mentor Protégée, which is a very effective program for 8(a) programs for 8(a) businesses to be able to partner to gain the resources and the knowledge of their larger partners and potentially create joint venture opportunities for contracts. And it also allows them to better learn the ropes of government contracting.

SBA's Government Contracting programs also help target preference groups such as Veterans. A very important action was taken yesterday where the Administrator announced Patriot Express which is

going to provide greater lending opportunities for men and women of the military, Veterans and the folks defending freedom and protecting our homeland as well as their spouses and family members who want to become entrepreneurs. I know you could share more about that later.

So to help further entrepreneurs seek government contracts, our offices are also conducting matchmaking sessions around the country to bring small business together with the partnership opportunities for larger businesses to partner for contracts, of course. In addition, we're expanding the number of procurement, the PCRs, Procurement Center Representatives at the SBA to work with federal agencies to ensure that qualified small businesses get their fair shot at contracts. Also working with the Department of Defense on the issue of procurement technical assistance representatives.

So there's a number of issues that we're focused; a number of resources from technical assistance to government contracting, business development and regulatory fairness that we're focused. So I certainly appreciate the opportunity to be here. We look forward to delving into your issues today. It's my job to do more outreach, to let more small businesses know we're here to serve you. We're here to listen to your concerns and, hopefully, bring about positive results. Of course, a great man from California, Former President Ronald Reagan, once said that the government's view of the economy at that time could be summed up in a few short phrases. And that was if it moves, you tax it. If it keeps moving, you regulate it. And if it stops, you subsidize it. Well in keeping with that premise, we certainly know that small businesses should be operating in an environment where regulations are effective and not excessive. And it's our job to help focus in navigating small businesses through the bureaucratic maze of federal regulations.

So I thank you for the opportunity to be here, again. And I'll turn it over to Madam Chairman, to begin the testimonies. Thank you.

**MS. KING:** Thank you. Our first comment will come from Chris Burt. If you could step up to the mic, please. Also, we'd like to ask everyone to try to limit your testimony to five to six minutes. We would like to get out of here at the scheduled 12:00. Thank you.

**MR. BURT:** Good morning. My name is Chris Burt. I'm a service disabled veteran small business owner, Sproc Technology. Our main focus is pretty much in the electronics realm dealing with our niches, the legacy, electronic components for any type of print circuit boards, circuit card assemblies going into any type of tanks, communication equipment, radar interceptors, you name it. Are you all familiar with print circuit boards?

**MR. OWENS:** No, no.

**MR. BURT:** Can I show you a demonstration real quick?

**MR. OWENS:** Please, sure.

**MR. BURT:** This is a simple example of a print circuit board. It's a TiVO box. As simple as that, you know, for home entertainment. All the little gadgets that go onto a print circuit board are more or less my realm that I deal with. How this, you know, affects what I'm going for is -- I'm having issues with is a lot of the older military programs deal with legacy issues of extended lifetime and lifecycle implementation to support the war fires on the ground.

I'm a former Marine Corp officer. I served two combat tours, first as an enlisted guy in Operation Desert Shield, Desert Storm and then I volunteered to go back over to Operation Iraqi Freedom. So I heard about this program of having the goals for subcontracting opportunities for the service disabled veterans. I figured I would take the opportunity to kind of meld my experience from being a global program manager with Celesca [phonetic], a Tier One contract manufacturer, to tie it back into the defense industry of one, providing timely responsive weapon systems to the guys on the ground, i.e., myself and my buddies, and also provide an environment for new businesses or growth of business for the guys coming back who are, you know, obviously, wounded or just are veterans themselves.

And during this program or process, I'd been saying about three years now I've been in business and it's been a growing and educating experience learning some of the, you know, get some little help points from the SBA and the different agencies. The areas that I've come up with that are points of concern, more or less, there kind of seems to be a eternal catch 22 with a lot of the prime contractors. Prime contractors range anywhere from Lockheed Martin, L3, Boeing, Northrup, Raytheon, then goes on and on. It is more or less trying to establish your past performance and your credibility based on your actions. So it's trying to tie and educate, market myself and my company to their activity and requirements. And their requirements are based on these legacy systems which they always complain about are difficult to support back to DOD, in particular, because of lifecycle activity and the length and how long a part stays out on the market and how they're being monitored and then manufactured and then integrate into these systems.

So I've been gradually building that past performance, marketing to different areas, going to different conferences, interacting with the different reps from both industry and from government to try to partner up. Had some great assistance with the Lieutenant Colonel Blanco [phonetic] out of the [break in audio] Army of the Saboo [phonetic] office, also the program manager for the Small Disadvantaged Business and [break in audio] veteran guys out of DLA, Defense Logistic Agency. And their big point was try to come up with a teaming opportunity that you can show and show grade of worth in value-added services and then present yourself or your team to the prime contractors. And so I kind of did that, you know, went through different approaches and then tried to build their activity up while also

trying to establish a way to enhance the past performance. 'Cause until you have past performance, you can't get a contract and then it kind of keeps going around and around. And then what is qualified or capable past performance.

So that was just an action that was always in the back of my head as I'm going to these different conferences and trying to mingle with other networking opportunities and other agencies out there to try to highlight a requirement, one and then a solution to kind of hit that, not only at a service level, but as a cost savings activity, 'cause a lot of these weapon systems, obviously, have a lot of dollars tied to them.

And throughout the period, some of the other areas end up being as the interactions between the PCOs and the, you know, the Procurement Contracting Offices, along with, you know, the SBA and the agencies creating the requirements and identifying the associate subcontracting plan. And having those negotiated to something closer to 3%, obviously, above zero; anything above that, you know, is a definite starting point. And then managing it when it gets transitioned to the ACOs and the DCMA groups. Okay.

So the issue that's out there is there's goals being set, sometimes a lot lower than 3%, subcontracting plans are not being met or given the best efforts and they're kind of slid over. The ACOs, then, get the opportunity of supposedly managing the metric base on the subcontracting plans really aren't. I called a couple of them down in -- before I go work with their Florida, Texas, California and Alabama. And a lot of the group, DCMA groups down there have perception issues that the PCOs ought to be doing in creating the requirement and maintaining it, stopping the contracts from happening and they're just a processor. They don't facilitate any type of interaction with industry to show that there's a fulfillment to meet that. So it's kind of like a process that's kind of going on, but not really being corrected. It's just the allowance of these type of activities and contracts. So I just [inaudible] draw some awareness that there is some difficulties interacting with, you know, upstream with the PCOs and downstream with the ACOs to really facilitate a true goal. 'Cause if a goal isn't measured, it's not really a goal. Thank you.

**JIM:** Okay. Who are the officials you're speaking of in the veteran's space? What positions?

**MR. BURT:** I initially started with the Small Disadvantaged Business Office like in Breadstone Arsenal [phonetic], went down with, you know, had discussion with them or the actual agency with, you know, the Army, you know, with several of the missile programs [unintelligible] that Lockheed Martin is working on. I'm actually a sub-subcontractor to putting a division of L3 on that. So it's trying to heighten the awareness of capabilities but also the awareness that hey, that there's some subcontracting issues. Like, 'cause until you get subcontracting opportunities, you're not going to be allowed to be a

prime.

**JIM:** Yes, sir.

**MR. BURT:** So it's not being allowed to be a subcontractor, due to, you know, the comprehensive plans which are centralizing, you know, the procurement activities, you know, the actual components. And then you can't get add on as a new supplier. You're kind of stuck in that eternal circle that, unless you have a physical walk in to those areas whether it's the PCA, DCMA group down in Florida or the Arsenal or somebody particularly that's working with a prime.

**JIM:** Well with that, I'd like to get you connected with our customer marketing representatives who work closely with subcontractors. So after this, I'll make sure I have your--

**MR. BURT:** Appreciate it.

**JIM:** Thank you.

**MR. BURT:** Thank you, Jim.

**MS. KING:** Our next speaker is Hyepin Im.

**MS. IM:** Thank you. Good morning. My name is Hyepin Im with Korean Churches for Community Development, KCCD. We are a non-profit but, as many of you are aware, non-profits also have to have resources to run as a business in serving the people. And we were told that this was a forum that we were allowed and invited and welcomed. So we're here today. I'd like to thank Alberto Alvarado and Sandy Duff [phonetic] for giving me this opportunity as well as the SBA Ombudsman.

I think the name Small Business Administration is appropriate that there are many small folks and also small organizations and also small communities or underdog communities that need a voice. And so, again, I'd like to thank you for being a champion and an advocate for the small folks.

Our organization, Korean Churches for Community Development, actually was born six years ago with the vision and goal of helping small organizations and communities be able to build their infrastructure to serve, again, small people. And one group that has been often overlooked are Asian youth. One of the fastest growing gang population in LA County are Asian youth with 20,000 gang members. The juvenile delinquency rate also has decreased for all groups in the last 20 years except for Asian.

And so with that, we went to Department of Labor to advocate for a program that would allow us to strengthen organizations who are serving Asian youth. And I was very happy to receive the award and in 2005, with the support of Department of Labor and our partner, CVS Pharmacy, as well as a Fortune 500 Company, named Orsi Nacro [phonetic], we were able to win an unsolicited grant called -- a \$5



million grant that would allow us to serve Asian youth and young adults with employment opportunities; with training opportunities; with educational opportunities with a lot of supportive services by empowering these agencies.

And this DOL approved our proposal as the scope of work. So there were no other changes. Our proposal was received as our scope of work. This proposal had multiple goals, as I stated earlier, which involved capacity building and sub-granting to agencies and then helping them provide supportive services as well as educational work experience and employment opportunities. And also, then, finally, a parent and community-wide education campaign, particularly for Asian parents. There are a lot of pre-set cultural beliefs that prevent them from taking or helping their youth take advantage of programs. One example is mentoring. They think that mentoring is for bad kids and they don't want their kids to receive mentoring. They also highly value educational opportunities over employment. And so there were a lot of education that needed to be done.

We also had one goal was to create linkages for these Asian agencies to the criminal justice system, the employment system, the educational system. All these linkages, the stakeholders that impact you. Again, because these agencies are small and they do not get the attention. When we first gave grants to these agencies, many of them just contacted, for example, the Probation Department, and they couldn't get a return call. So with the advocacy now, we've had some major successes including an official MOU with the Probation Department where these agencies are now official referral sites.

So with all these goals, I'm happy to say that we met all those goals and we exceeded them including serving not only 180 youth, as we stated in our proposal for year one, but we actually served over 341 individuals. And so we have been able to create this transformation in our community.

However, DOL is denying our second year renewal which will mean \$4 million, because the first year was \$1 million, \$4 million more to really have a nationwide impact; the same kind of impact that we've had in Southern California. We're here today to express our concerns, as mentioned earlier, that you're here to remove the uncertainty, the confusion and unfair enforcement and regulatory processes. And we feel that in many ways, even though, because of DOL, we accomplished all these goals, along the way there were some concerns that we don't know why and we hope that you'll be able to help us answer that.

First, in December 2006, DOL prematurely determined that our second year funding will be denied because we have not met our goals. But, in reality, we were given a no-cost extension until December 2007. And this is a year out before we ever even -- we're not even finished with our year. We accomplished our goals and we still have 6.5 years - - 6.5 months more. And so it makes us raise a question, do they want

us to fail?

They also said that we did not meet our match requirements that we provided. Again, we were intentional in hiring the same consultant with the Latino Coalition that received the same grant. And they were the one that implemented this match system and that was approved. But, for us, they're saying that this match doesn't qualify and they did not ask further questions. So, again, we ask why? They also made us meet a 50% match, whereas with Latino Coalition, they only asked for a 20% match. So, again, why? It seems like there are these high thresholds that we're being forced to meet.

Another part is that they also made us serve -- divide our constituents from 14 through 17 and 18 through 34. Latino Coalition, they were able to serve both in by grantee. Again, there's a lot of other things, but I see that my time is up.

But, basically, we have asked DOL for training and assistance and for these questions to be answered. And, at the end of the day, we would like a collaborative effort. You know, we would like to ask those questions to determine success so that the other Asian youth that are here throughout the country can receive the same kind of opportunity as other communities and to have the kind of ramp up times that is consistent with many other grants with other agencies for a, you know, a multiple year grant that they received. So please help us answer these questions and be able to continue to provide hope to a small underdog community that is often being overlooked. Thank you, again.

**MS. KING:** Thank you. Our next speaker is Michael Velazquez.

**MR. VELAZQUEZ:** Good morning. Thank you for allowing me to be here. I had a long commute in getting here today. A couple of the people in the SBA know that, that's sort of an inside joke 'cause my office is right down the hall. But I'm a recovering CPA. Thank you. I'm a tax practitioner and a tax advisor, primarily to small businesses; your very same constituency. And I'm here to talk about the IRS. Hopefully my clients will not get audited after I leave here today.

However, I'm not here to criticize the IRS. I'm here to encourage the IRS to take more of a leadership role in what I perceive to be a significant problem that small business seems to be paying the broken dishes for.

First of all, a little bit of background. I have developed excellent relationships with IRS personnel. I have many friendships on the other side, if you will. I have colleagues that have gone to work for the IRS; have come out of the IRS and gone into private practice. So it seems that we're all over the place. However, I have also participated in practitioner liaison groups. So I'm very comfortable discussing these

topics. They're not new.

About ten years ago, I participated in what was called a Tax Court Pro Se program where a group of CPAs belonging to the American Association of Hispanic CPAs volunteered their time to show up in the small case calendar of the Tax Court in Los Angeles to help translate people that were showing up; sometimes for the first time meeting with an Appeals Officer were lost in the system; had no idea why they were there. And we got cases resolved. Okay. Sometimes that's what it takes. It's just a little bit of reaching out to people and talking what the issues are. The small case calendar judges loved us because we alleviated their calendars in a big way.

Conclusions from these experiences are that, in general, the system works. The IRS collects money. Sometimes we wonder at what cost. And oftentimes, we have to adhere to such arcane, silly rules that it's embarrassing. So my general conclusion is that the IRS needs to reinvent itself. It needs to take a look at how it conducts business.

At the heart of the matter is what I call the 800 pound gorilla that nobody wants to talk about is what constitutes adequate substantiation. And I have a number of cases that, in the recent past, that we have come across that point to that very issue. And, yes, they're anecdotal.

However, the central theme in these cases is that the entire tax code is written, in some cases, it's very black and white; in other cases, it is very elastic. And in those areas where it's black and white well, you know, we don't expect the IRS to take a contrary position. In those areas where it's elastic, we don't expect them to agree with us all the time.

However, sometimes certain positions are taken which defy logic. And let me just give you a couple of examples. Okay. We had a physician client that we defended in an audit. That audit was a no-change audit which meant that there were no adjustments. However, the auditor in question completely misunderstood the rules for home office deductions. There was nothing remotely of red flags in this return. She disallowed deductions for the purposes of the small -- the home office deductions.

We knew we were correct so we tried to talk to the supervisor. The supervisor backed her position. We ended up taking it to appeals and now we're dealing with appeals. Mind you, this is a no-case -- a no-change audit that expanded into a second year. Okay.

Now we're dealing with the Appeals Officer. The Appeals Officer saw fit to re-audit everything that the first auditor had already looked at. Okay. We went along with it. We wanted this thing to be done. At the end of the day, she asked for the same substantiation we had already produced. We produced it again. She asked for, it's very typical for a taxpayer that claims home office deductions, to present the

costs of running -- thank you -- the costs of running the home, the office. And so there's a system and allocation which the IRS folks know very well where you say okay, this part is personal. This part is business. But you start out with the total costs. So she wanted to know how much the taxpayer had spent on utilities. Well we sent them cancelled checks for 12 months, front and back for two years with the City of Glendale, with the account number on there. Her response; she wanted to see the invoices. Okay. Now who keeps invoices for four years from utility companies? It's absolutely ridiculous. I mean, any sensible person would come to the conclusion that this is adequate documentation substantiation and let's move on.

So I know I have a short time so I just want to conclude with this. I think a good beginning would be for the IRS to give its frontline people a little bit more latitude in considering what constitutes reasonable substantiation and documentation. And let's close these cases out a lot sooner; get the IRS the money that they deserve. And let's stop making these small business people pay for all the broken dishes. Thank you.

**MS. KING:** Thank you. If you want to stay [inaudible].

**MR. OWENS:** [Inaudible]

**MR. VELAZQUEZ:** Yes.

**MR. OWENS:** Yes, he has comments to [unintelligible]

**MR. VELAZQUEZ:** Sure.

**MR. OWENS:** The Office of the Taxpayer Advocate at the IRS, of course, is an independent entity within the IRS, reports to Congress. Have you filed or had any correspondence or communication? What's been your experience with the Office of the Taxpayer Advocate?

**MR. VELAZQUEZ:** I've had very positive experience with the Taxpayer Advocate. And I regret to inform you that I've had to use them more often than I care to admit because of things like this that should have been resolved by frontline personnel. But they have been extremely helpful and extremely impartial.

**MR. OWENS:** Excellent. Thank you.

**MR. ALVARADO:** Let me just add we enjoy hearing from our neighbor. One thing I've learned from Mr. Velazquez since he's been our neighbor; I now keep all my invoices. Thank you very much.

**MS. KING:** Our next individual is Cooke or Cookie Sunoo. Cooke Sunoo, thank you. And if you could, please stay at the podium for questions after you're done. Thank you. Not here? Okay. Then next will be Shade Mazbanian. Please. And I apologize if I pronounce anyone's name incorrectly.

**MR. MAZBANIAN:** Perfect. Thank you very much. First I want to thank the National Ombudsman, Mr. Nicholas Owens; Bruce

Thompson, the Regional Administrator; Mr. Alberto Alvarado, District Director; all the SBA staff, the panel, guests and all the sponsors and so on. And thank you for the opportunity. I appreciate it.

My name is Shade Mazbanian. I'm a Vice President with Bank of America, Business Banking. And I'm here to make a suggestion more than a criticism or a comment. And my suggestion is more revolving about the SBA Express Program.

I'm going to read a little bit from what my comments were. Of course, the SBA Express Program is the most successful business loan program in the country. Currently, the SBA Express program guarantees only 75% of business to banking institutions that extend credit to clients under the SBA Express program. My recommendation is to increase that guarantee from 75% to 100% which, for example, what that mean was on a \$10,000 loan, a bank would have a guarantee of 100%. That means they're guaranteed funds to be returned for credit reasons.

The reason this would benefit -- thank you -- this would benefit the banking institutions and, obviously, extending more credit, taking on less risk which means that the small business owners will end up with more capital to start their business and grow their business. So this will ultimately help the economy in general by, you know, increasing tax revenue for the U.S. government and also having small business owners, you know, hire employees; grow your revenue and, ultimately, more activity and increase in the GDP.

That's my recommendation. I just want to end it with making a comment, again, thanking the LA District Office, Mr. Alberto Alvarado and the entire staff. They've always been open to, not only to myself, but also all the business owners that have any suggestions or comments. So I can really take any questions.

**MR. ABEDIN:** I'd like to ask since you work at Bank of America, what kind of SBA loan you guys have [unintelligible] for your basic loans to the small business?

**MR. MAZBANIAN:** Sure. Our SBA loans, we primarily concentrate on the SBA Express. We do lots of those SBA Express loans. And they, you know, the SBA Express Program is under \$150,000, correct me if I'm wrong if that limit has gone up. And we have a start up program for anyone that's starting a business that has a good credit score for \$10,000.

So, with my recommendation of increasing that guarantee from 75 to 100%, I could see, you know, not only my bank but other banking institutions maybe having that limit on the startups go from 10 to 15. It's more of a credit decision. And I believe that with the less risk passed on from the government to the bank, that would pass to the individuals which will, ultimately, you know, make the economy grow and pay more taxes which the government wants and, obviously, help

the economy in general. Yes?

**MR. THOMPSON:** What would the amount that you wanted the amount increased to is --

**MR. MAZBANIAN:** To 100%

**MR. THOMPSON:** How much?

**MR. MAZBANIAN:** 100% guaranteed.

**MR. THOMPSON:** 100% guaranteed.

**MR. MAZBANIAN:** Yes, instead of 75.

**MR. OWENS:** Sir, we'll certainly take that back to our Office of Capital Access. But with that point, I do want to ask you underservice, underserved communities, of course, a part of Los Angeles and are across the country. What have been your experience as far as providing greater access to capital or do you have any thoughts, perspectives on what we can do to help facilitate better access to capital of underserved America?

**MR. MAZBANIAN:** Well we've worked closely with the SBA in putting seminars together in underserved communities, you know. Not only with our bank, but I know we have -- we work closely with other organizations either the VEDC, the Economic Development Corporations that we work with that we just need to get the message out to every single individual. Now sometimes they don't even know that these programs exist and would explore. And so our job is to take the step and kind of take the message to the people, to the community and we're out there. You know, we're out there in our banking centers. We're out there promoting as much as we can to give that access to individuals. I think the best way to do it is to go to them instead of them coming to us through seminars and other programs like that.

**MR. THOMPSON:** As far as servicing your clients, what kind of an increase would you see if we actually went to 100% versus 75?

**MR. MAZBANIAN:** You know, I'm not a mathematician. I think that would probably would be someone who does statistics will have to put that together. But my opinion is that it would probably go up about 10 to 20%. The credit [unintelligible] would be opened up a little door which means it would -- the less risk is passed on to us, then we'll pass on to the client. It will be opened up a little more. Maybe our requirements will be less. So it'll probably give another bump of about 10, 20% increase to individuals that are looking to borrow. That's my opinion; my own personal opinion.

**MR. THOMPSON:** Would that also lower the interest rate and increase the term or what would be the advantage of that?

**MR. MAZBANIAN:** Well the, you know, the interest rate is based on the market, you know. It's, as you know, right now the interest rates are, you know, they're still fairly good. It's based on the

market. So my comment is not so much on interest rates. It's more having more access to individuals and I believe that if you increase it to 100%, that should give another 10 and 20% increase.

**MR. ALVARADO:** Okay. I think that Mr. Mazbanian raises one of the core issues that the Ombudsman alluded to the Patriot Express program which we announced yesterday. We're doing a local roll out here in Los Angeles and that is [unintelligible] balance being the interest of the lending community and as Shade suggested, to the degree that financing is more spacious to the bank, they're more willing to take a risk, to reach deeper into other communities. I think that Member Reyes [unintelligible] up the balance being to that and that is what is the advantage to the consumer and we agree that the interest rate is lower. Obviously, one advantage is that credit becomes available which might have been available. But I think these are some of the challenges and the opportunities that [unintelligible] will make credit more available in the pocket throughout our country that are still not able to access.

**MR. MAZBANIAN:** Thank you.

**MS. KING:** Next up is Fred Mayer, please.

**MR. ABEDIN:** Madam Chair, I know that Fred Mayer is not able to come here. He's supposed to be represented by Ira Freeman [phonetic].

**MS. KING:** Is Freeman here? Okay. Then we'll turn next to Dr. Raj Dutt. Here also? Okay. Dr. Mileikowsky. Also we have the presentation. It is put out on your tables [unintelligible].

**DR. MILEIKOWSKI:** Ladies and gentlemen, Madam Chair, members of the panel, first and foremost, I would like to thank you, Mr. Owens, for inviting me. And something of your spirit or someone's spirit is really very impressing, impressive, I'm sorry. It's one thing to do things right, but it's another when you really exceed any expectations.

And Mr. Alvarado, you'll probably will be very happy to hear that I've had an experience I've never encountered ever in the private sector or any sector, let alone a government agency. Miss Catherine Clark [phonetic], when I happened to simply, out of -- talking out loud, say that I actually didn't realize I did not have enough business cards, offered actually to take my business cards and photocopy them. And that's how I have them on the books. So you must be doing something right. I'd certainly like to learn your --

**MR. ALVARADO:** The supervisor [inaudible] great timing.

**MR. REYES:** I heard it [unintelligible].

**DR. MILEIKOWSKY:** Well it's recorded. I noticed that on your introduction, Mr. Owens, I see quite prominently affordable high quality health care. I'm also happy to see that a representative from the

government here who is hoping to achieve such a target, but I think it's presently misguided. But I would like to be helpful and I hope that my talk will actually assist the Governor, as well as the President and Congress.

The presentation is entitled Death of a Physician's Private Practice. You certainly all heard of the Death of a Salesman, from Arthur Miller. And to put things in perspective, first don't worry. I'm not going to go through this whole book. But you can follow my outline and I will go through it fast in the beginning, slow at the end.

Recently at the Veterans Administration Hospital here in Westwood, not too far from here, there were three highly decorated veterans. All three diagnosed with terminal disease. None of them was given more than three to six months to live. Because they served our country in such an extraordinary manner, they were all given whatever wishes they had. The first one choose to be in Hawaii, have unlimited supply of alcohol and ladies. The second one choose the Caribbean Islands, unlimited supply of alcohol and ladies. The third one asked for a second opinion.

I hope I shall be able to provide you here a second opinion for what is most definitely a terminal disease. Not only for the small businesses in perspective of their office of their physician, but actually the whole health care system as a whole.

I would not be here today, Mr. Owens, if about 10,000 physicians' careers were not destroyed. Since about 1986, when the Health Care Quality Improvement Act was passed by Congress, and I will go over the problems of that legislation and others, another reason I would not be here if the solution to this terminal disease would be medical or technological. The only answer here is now for you to be the doctor. I am the patient. And the solution is actually the legal environment and the three branches of the government.

By the way, on the list of agencies, I did not place the IRS because I did not think the IRS would be here or the Franchise Tax Board. But I used to be a small business, Mrs. King. Unfortunately, I cannot say, like the member of the Board, that I'm a bigger business or same size business. I'm over \$2 million in the red. Yet, the IRS and the Franchise Tax Board has liens against me. And I told them multiple times, what are you wasting your time. Go after all the people I paid.

But I'm not here to talk about myself. If I do at any point in time, it's not because I want to talk about myself, but so that you realize you can substitute my name with any other name of any other physician in the country.

Let's look at what are the basic economics of a physician's private practice. It's very simple. Like any business, you have expenses and you have revenues. What are [unintelligible] as practice, it was determined the success or failure of a physician's practice is very



simple. It's his or her reputation. You destroy the physician's reputation, the physician has no practice.

Between 1988 and 2000, over 12 years my practice grew up to over \$0.5 million revenues. In the year 2000, on page five of the outline, you will see that I did what I thought was my duty and in my [unintelligible] as a physician. You all heard of Murphy's Laws. Everybody heard about [unintelligible] errors are human. And that's normal. But knowing that, you have to do everything to prevent the damages as a consequence of those errors.

I happened to stumble into what I did not know could be possible. Egregious below the standard care, let alone battery which you will find it outlined on page five. None of those charts or those medical records were ever reviewed within the internal quality control system of the hospital. And so I had to ask myself the question, why?

What's important to know is that as soon as I agreed to testify on such a case, within three days I received a note from the CEO of the hospital indicating that I was going to be escorted by the security of the hospital. Strangely enough, there isn't a single complaint from any patient against me. And three days after I went to the FBI headquarters in Westwood, Federal Building, I got a phone call from the same CEO telling me that my clinical privileges were suspended. Again, no negligence cause of action against me by any patient; no complaint by any patient against me. That was troubling because the question I had to ask myself what is it that I know they're so afraid of?

And when I reach a conclusion, to cut to the chase, is that, unfortunately, in the health care industry, there are a lot of similarities with the Godfather's movie. There's nothing personal here against me; pure business.

And so what you have is a systematic, unique ability to destroy a physician's practice with hospital's corporate attorneys' tactics which are described on page 11 and you have attached on page, on Appendix 2, where they teach in those courses, seminars and all your [unintelligible] that you can buy on the internet, is how to protect yourself from a whistleblower. How to develop and implement a financial conflict of interest policy. How to provide financial incentives to physicians. How to regain control of the hearing process. At the position of a hearing process, who should be excluded? Can the hearing rights be waived? What's an impaired physician? Odd behavior; personality change. Who should serve on a physician's health committee to evaluate an impaired physician? How to avoid reporting a physician to the National Practitioner Databank.

The forensic analysis of this crime is on page 12, item 4. Go for the jugular. Summarily suspend a physician's clinical privileges under the false pretense of imminent danger. For those of you who are not familiar with the law of imminent danger. It is a good law. It is there

to protect patients from physicians who come to live in delivery drunk; had a heart attack or had a stroke. Clearly, they are a danger to their patients. But no Court feels that it has the medical expertise when the hospital claims a physician is an imminent danger even if there's no such evidence.

I'm happy that there's a gentleman from the CMS on the line because the National Practitioner Databank is basically disseminating false 805 reports and false National Practitioner Databank with absolutely no check ups. And so that exacerbates the problem because it triggers as soon as a physician is suspended over the 14 days he or she is reported to the State Medical Board, within 30 days of the National Practitioner Databank and there's no balance, no checks. It's reported to malpractice insurance carriers, medical insurance carriers; basically, you're dead on arrival.

The association of a summary suspension with an never ending exhaustion of [unintelligible] remedies in the hospital, guarantees that a physician will die from [break in audio]. Hence, there are very few physicians who can stand up at this podium, let alone claim their published opinion which you'll find actually on Appendix 1.

Recently, June 8<sup>th</sup>, a miracle happened. Actually, two miracles happen. Court of Appeal here in California, Los Angeles, ruled in favor of the physician against the hospital; the largest chain health care corporation of America. And the second thing is that opinion is published. To that effect, all physicians and hospitals in California and still California has a reputation of preceding the rest of the country is made influence the rest of the country.

Now let's look at something very important in the law. There are two principals in the law. By the way, mind you, I did not study law as usual people do in college, but as a victim. But there's the spirit of the law and there's the letter of the law. We are in a country, ironically, of free speech. Yet, there is no First Amendment in hospitals which are embedded in the most chilling code of silence. Another paradox is we're living in a wonderful judicial system that promotes due process. Yet, the 14<sup>th</sup> Amendment does not apply in hospital administrative proceedings. Sorry to tell you that a physician in this country is nothing but a second and maybe a third-class citizen. A physician in California does not even have the right to be represented by an attorney at a hearing in a hospital.

Fear is what permeates the whole health care system. And we have to look where it originates from and how to cure it.

**MR. OWENS:** Sir?

**DR. MILEIKOWSKY:** Yes, sir.

**MR. OWENS:** May I ask, is there a particular federal agency--

**DR. MILEIKOWSKY:** Yes.

**MR. OWENS:** --that we can get to --

**DR. MILEIKOWSKY:** I'm getting there.

**MR. OWENS:** Thank you.

**DR. MILEIKOWSKY:** No problem, thank you. Who controls peer review? Peer review is a quality control internal system in hospitals. And is the expectation of the law reasonable? Can physicians on staff of a hospital review their peers in the same facility? No and no. The physician who's friend of another physician will, obviously, be friends and will do everything to save another physician. A physician who doesn't like another physician, will do everything to bury that physician, particularly if that physician is a competitor.

So that you know, this outline and all the documents attached, are available to all of you at the website called [allianceforpatientsafety.org](http://allianceforpatientsafety.org). So not necessary to take any notes.

Can hospital administrator governing board and their attorneys conduct a reliable peer review? And the answer is, unfortunately, no. On page 15, you have a character that's a cartoon. Chinese say that in one picture, you have 1,000 words. Well the words are very clear. It's comes from Barons where you have a patient in the hospital, the bed with the doctor saying we've upgraded your condition from critical to costly.

Now I cannot go because of time limitations to what I was going to cover, so I'm going directly to the remedy, page 20. What are the remedies? A hospital that runs a kangaroo court should not be able to benefit from its own wrongdoings. Such peerage views should not enjoy immunity for any [unintelligible] actions. Someone once said that absolute power corrupts absolutely and so you should not expect anything else.

Each and every false National [unintelligible] reported to the National Practitioners Databank should be double checked, confirmed that it's true and accurate. And if it's not, to be rejected. That's number one. Bad faith peer reviews should not, number one, be privileged. Number two, should be enjoined as though in equity in state and federal court; three, give rise to damages action including attorney fees.

There needs to be like in a banking system, like in every industry, in every where and like any normal human cell or any cell or anywhere. There needs to be a balance and check. We don't have either. The process must be fair, reasonable before due process of law implement adequate legal remedies and the details are found over here.

First suggestion, Mr. Owens, I see that you report to Congress. Just remove one word from the Healthcare Quality Improvement Act, Section 11112(b) and (3), remove the word not. Presently the Healthcare Quality Improvement Act reads as follows: A professional

review by the these failure to meet the conditions described in this subsection, shall not, in itself, constitute failure to meet the standards of subsection (a)(3) of this section. With all due respect, I don't understand why you have a law and then say you can violate the law and it's okay. Then you might as well not have the law. The simple removal of the word not would be a remarkable revolution.

Second, we need to [unintelligible] expense all existing state and federal whistleblowers to all physicians. Governor, hopefully, will have a bill soon on his desk which shall extend an existing bill that covers physicians and employees of hospitals and patients. But, guess what? 50% of physicians are not employees for the moment until there won't be any -- it becomes now a very dangerous species in danger.

Now we hear a lot in politics, just talk about solutions. Is the single payer system is the best solution? Is a consumer-driven health care system the best solution? Well actually as a scientist, I can observe what is happening already. We have three systems, economic systems in the healthcare in the United States. We don't have to go anywhere for a solution anywhere else.

Number one, we already have a single payer. Everybody over 65 years old in government agencies, counties and so forth. Number two, we have a socialist system. HMO [unintelligible]. And number three, we have a capitalist system with private insurance fee and services. Guess what? The Rand Corporation here in Santa Monica and Los Angeles looked at that. And their report is called the First National Report Card on Quality in Healthcare in America, 2006. It's Appendix 7. All adults in the United States are at risk of receiving poor health care, no matter where they live, [unintelligible], work, or from where they seek their care, what their race, gender or financial status is.

Mr. Owens, you can be proud to report to Congress that this industry respects the federal Antidiscrimination laws. You're equally at risk.

Canada has a single payer. If that system would be the solution, then errors and complications in healthcare would not be the third cause of fatalities in Canada.

**MS. KING:** Doctor, excuse me.

**DR. MILEIKOWSKY:** Yes.

**MS. KING:** We have seven more people that still need to speak.

**DR. MILEIKOWSKY:** No problem. I certainly need 60 seconds and I'm done.

**MS. KING:** Thank you.

**DR. MILEIKOWSKY:** An American solution exists in the airline industry. We have right now in the hospitals one jumbo jet crashing every week. Why don't we have it in the airline industry?

Because it's simple. Number one, we have a black box. Black box has no conflicts of interest. It has no bias. It's impartial. It tells us exactly why the plane crashed. Number two, we have an FAA. And FAA has regulation and authority over every single aspect of the airline industry, whether it's a captain, a mechanic, flight attendant or management or the manufacturer. And thirdly, we have NASA Aviation Safety Reporting System that allows anyone in the industry to report anonymously any problem.

Healthcare industry does not have a black box. Healthcare industry does not have an FAA. And the healthcare industry does not have NASA.

In conclusion, [break in audio] we need to ask ourself if we want our odds to be better than going to a casino. And we know casino always wins. John Kennedy once said my fellow Americans, ask not what your country can do for you. Ask what you can do for your country. Mr. Owens, you ask me to openly tell you what the government can do. The government has three branches. This is bigger than just the executive. There's the executive branch. There's a legislative branch; there's the judiciary. I've spoken with executive branch, Department of Justice and other branches. They don't have always the jurisdiction. Take Medicare; Medicare only applies to patients 65 years and older. I have yet to see in my practice a patient 65 years old that ask me to help her get pregnant.

So there is no quality control jurisdiction from CMS that I know of for any patient under 65. What we have is a healthcare holocaust. Over 6 million patients died in the last 30 years as a consequence of errors and complications not as a consequence of their disease. And anyone who thinks the status quo is an option, I would like to remind them what Edmund Burke, the philosopher from -- Irish philosopher in a statement said. All that is necessary for the triumph of evil is for good men to do nothing.

And so it's interesting to know that cynics say, and that's the last I will share, is actually the uninsured may be lucky. This is really, really strange and paradox. Why? Because they are less prone to be exposed to errors and complications.

I thank you very, very much for inviting me. I thank you even more to indulge in the time that I've had. I'm fortunate that two or three people didn't show up. Thank you very much and I'm available to any agency, anyone in this room, anyone out of this room, to elaborate on all those documents attached. Obviously, there's no time for me to cover it. Thank you very much, again.

**MR. ABEDIN:** Question; why we don't have a National Healthcare, the same that England and Irish and in Europe and Canada?

**DR. MILEIKOWSKY:** A National?

**MR. ABEDIN:** Healthcare.

**MS. KING:** Perhaps you can discuss that after. We really need to move forward to the other people that didn't come to give facts and [unintelligible] and I do need to read them. First, we'll finish with everyone that's here, please. David Cooper.

**MR. COOPER:** Good morning, Mr. Alvarado, Mr. Owens, Madam Chairman, members. My name is David Cooper. I'm with United Healthcare Partners here in Los Angeles. My issue is relative to set aside regulations and compliance and I want to thank Mr. Alvarado for his help up to this point as we have gotten here. And I appreciate being invited to speak today.

We've provided you with an 11-page document that shows all of the issues relative to set aside with respect to specifically the DLA and the VA. At the present time, there are four VA clinics that are up for re-contracting for services, both doctors and nurses and ancillary staff.

A little bit about United Healthcare Partners is that we are a small business. We are a veteran owned business. We are all doctors and nurses including myself, the administrators. I've had over 15 years of management practice for one of the larger healthcare corporations, Tenet Health Systems here before starting with United Healthcare Partners.

Our issue is that we are attempting to win bids for these clinics. And as we all know what's happening with Walter Reed Hospital's outpatient clinics, it is a problem. What we're trying to do is to get set aside these contracts for small business, not necessarily minority, but just for small business. But what we've had is a problem in that the contracting offices and the SBS representatives are either not well trained, not well regulated or not compliant with the regulations that are set aside for small business procurement.

What we've found is that the process is supposed to include any one of a number of different items or processes that will allow them to do a [break in audio] survey. They are looking at past history. They're looking at the interest of small business previously for the operation of these clinics. However, these contracts are five years old, since the last time that they were put out for bid. And, of course, the information leading from that is probably not very up to date, obviously.

In talking with the representatives over at the DLA, specifically in Philadelphia, and the VA here in Long Beach, what we're finding is that they either don't know what the vehicles are that are available to them through Fed Biz Ops for interested vendors lists. Or they are going with what was previous which was it was awarded to a large concern and only large concerns provided proposals or interest. They are not going for the sources sought which they should be doing because that would give them a comprehensive information on what providers are out there and capable and available and interested.

We have suggested that they do that. They have set aside the -- they're putting out the proposals as a pre-solicitation. They're making a determination at that phase that they are going to be unrestricted. We have asked that they rescind that, to cancel that and then put out as a sources sought so that they can glean the information. Because, let's understand that if you don't ask the question, you're not going to get a response. So if you are not asking the question; if you're not saying to small businesses are you out there? Are you interested? Are you capable? Then you're not going to get a response and cannot use that as a justification for not setting it aside.

We have found, and in this DLA for Torrance, California, this is a clinic for occupational health. The information that we've provided for you for the DLA which is handling it in New Cumberland; this is a small size for \$9 million standard size for a business. Their incumbent is a large hospital and, incidentally, the hospital is the only hospital within 25 miles. They have put in information as to requirements in 3.2 of the SOW that stipulates that the facilities physician must be within 25 miles. Well imagine that. The SBS Officer who we've talked with misunderstood the requirements. She misinterpreted the requirements. And they are -- it appears that they are intent upon not setting this aside, even though we have provided her rebuttal to all of her three different justifications for not setting this aside. Thank you.

So the other part of it is the Orange County VA which I would like to introduce today that I didn't provide in my documentation that I did send to you. And this is a -- where the four clinics were going to be put out as an unrestricted [break in audio] pre-solicitation phase. They did, in fact, adhere to the assistance that we were afforded by Mr. Alvarado's office, Miss DeManalissa [phonetic]. I'd like to thank them very much. And they did, in fact, cancel the pre-solicitations and put them out as sources sought. And I am aware, however, that there have been at least three that have provided sources sought on this including my company, but yet, as of yesterday, which is why I'm introducing it in today, they did, again, re-release it as an unrestricted.

And, of course, the rules do stipulate that if you get two small businesses that have the capabilities and interest, you must, in fact, set it aside. There really isn't any oversight. There really isn't any compliance. Thank you. And we really need to have you to look into this to assist us with getting these things set aside as the rules, regulations and law requires. Thank you.

**MS. KING:** Next is Jesus Arguelles.

**MR. ARGUELLES:** Thank you. Good morning. Hopefully, it will be good afternoon. My name is Jesus Arguelles. I've been serving the access to capital needs of Latino as well as the small growing companies in Southern California and parts of the Southwest for the last, I'd say, 25 to 30 years. If [unintelligible] anyone has seen the evolution of the infrastructure of Access to Capital, I would submit this

truly is a candidate for that.

I'm here on behalf of two specific clients that we have helped with capital in the past. They are an 8(a) firm, both of them. The concern that they wanted me to share with the panel, with the audience, is that raising capital and accessing procurement opportunities with the federal government is truly, truly a challenge. For a variety of reasons, one, in their view, the system is not as streamlined, as efficient, as effective as it should be. And it's specifically that we're referring to [unintelligible] procurement contract officers.

The contract officers need to be what they call, again, I'm quoting them, literate in the application of regulations. There seems to be an implied or, shall we say, a kind of a stealth process in which the procurement process occurs. They were very specific and, obviously, I can share those with you at a later time. They're seeking -- both parties are seeking contracts in excess of \$4 million. And there's been very little communication. Whenever they submit, what they call -- what is called an SOP which they, which is a Statement of Position, that's to require to bids. When, in essence, the decision has already been made. In other words, we use loosely the phrase the contract has been wired. And it doesn't happen only once, but it has happened the last 3.5 years. They've been in the program 4.5 years.

The suggestion is that perhaps a management audit, an operational audit, of a specific program that are sponsored by specific agents to be consider. To be precise, a performance audit that would outline with transparency the specific performance measures and benchmarks. And that report -- then report that, obviously, to Congress for the overview in agencies. I'm sure that has been done in the past and is not a new idea, but perhaps needs to be revisited.

The other idea that has been shared with me by my clients is that there needs to be better communication between contract officers and the prospective bidder. The calls do not get returned and once the client has expressed interest on that bid, there is no acknowledgement that, in fact, they are qualified bid. What process can be used to enhance their communication, by my sense, is that a call from your office would definitely facilitate that process.

So I can allude to the specifically the agencies that have -- that are under question, Department of -- I'm sorry. Department of Labor is one. National Institute of Mental Health; the Centers for Disease Control and there's two other agencies that are at issue here. Again, I'd be happy to provide that information at a later date.

Your role as an Ombudsman would be of great value to individuals. And I think that's one specific suggestion that I have, that most of the business people that I know over the years do not really understand the role of an Ombudsman which is what I call a political lubricant. And that, to me, is a way to go. Actually, you are also more



than a political lubricant. It should be you're a capital catalyst. And if that doesn't fit your description, then I don't know what would.

And in final conclusion, what we're suggesting or what my clients are suggesting, is nothing out of the ordinary. It's a very simple process of increasing accountability; you mentioned accountability earlier; disseminating information and perhaps given a little bit more transparency to a stealth process that is still current in the marketplace, specifically in the marketplace of government. Thank you very much for the time.

**MS. KING:** Thank you. And Genvieve Claireul. We also have seven individuals that we will be reading testimony from as they were not able to come but they did submit them in writing.

**MS. CLAUREUL:** Good morning. Genvieve Claireul. Mine is going to be very brief. I'm so used to testifying at the Board of Supervisors, I've learned to do everything in two minutes.

One of the issue I would like to talk to the Ombudsman is about the IRS. I think, you know, many of the small business would be glad to meet some of the requirements if those requirement were written and, you know, spelled out. Myself, over the last two years, I've been [break in audio] issues to file for a home office. All for is, you know, mileage. I have to, as a [unintelligible] told me, after all that time, the reason this could not be allocated is because I had to give every meeting I had been at, document and not only the name of the meetings, but all my notes. And, you know, since I am involved with the healthcare industry, and a lot of thing have to do under HIPAA, is a catch 22.

And I think to demand that someone hand over to a government entity every private issue at every private meeting that I have been is absurd. And I think you probably bordering illegal and invasion of privacy. So I would like to be referred to someone from the IRS and every time when I have complained and went to an Ombudsman, I got retaliated against even more. And [unintelligible] the process of retaliation, you know, is very strong.

I want [unintelligible] somebody from the CMS on the phone. I am extremely concerned the way the issue about Kendall Medical Center has been handled. I think the CMS have sleeping on the job. And this would be very nice if the CMS would communicate when people, you know, call them or ask for information, 'cause I'm sure there is information that has not been produced who could have tremendously impact what's going on with Kendall Medical Center because as happening today, the only trauma center we had in Los Angeles County, the only one, was [unintelligible], you know, compliant. We closed it. Thank you for your attention.

**MS. KING:** Is there anyone else in the audience that would like to testify? Can you state your name and your business, please.

**DR. WAKSBERG:** Sure. Yeah, I'm Morry Waksberg. I'm an ophthalmologist, medical doctor. And this is, I guess, the agency that I'm most interested in is the Center for Medicare Services and I understand we have someone on here. And also I appreciate your letting me speak without having arranged it previously. That shows a openness to spontaneous communication that governmental agencies respectfully don't usually have. And it says a lot about this agency or this position.

I've had kind of a 20-year saga wherein in the beginning, I was an ophthalmologist. A competitor made up an allegation saying that I was billing improperly and his motive, obviously, was -- there were two of us in a small town. He wanted to be the guy that did all the surgery and actually accomplished that. I've been -- I haven't practiced in that area for, I don't know, 15 years.

And what happened is once this allegation was made, it went to a Medicare intermediary, TransAmerica. And subsequent to that, they brought in the Inspector General of Center for Medicare Services who's, at that time, was very, very aggressive to the extent of ignoring due process and many of the protections that all of us are blessed to have. And to the extent that the State Attorney Generals who are not friends of physicians but are, you know, the enforcement or the prosecutorial state agencies went to the President because the Inspector General is appointed by the President. And only the President can remove him which says a lot about the accountability of that person when the President appoints him and then has to remove someone he appointed at a later date. Makes him look bad and there's a huge reluctance by political leaders and all of us to admit our mistakes.

So after a long battle, I ended up having a criminal investigation against me and I was Joe All A's in college, one A- and, you know, straight as an arrow; never been sued; never sued anybody; made sure I never got a parking ticket; kind of anal about complying with the law. And through this battle, I ended up finding that this agency, at that time, and this was years back, was less interested in whether the physician had done anything wrong than in getting a prosecution or an agreement by the physician that he or she had done something wrong. Well many physicians do things wrong and many don't. The problem is that a physician looking at a criminal investigation, jail and not being able to practice and having huge financial penalties usually settles and once they settle, they're guilty. And it's over.

In my case, I wasn't willing to do that. So I fought on; ended up with a federal judge finding that -- ordering a restraining order and an injunction against the insurance company and against the governmental agency which was Health and Human Services. After this injunction, I thought well, you know, go back, be a doctor. It's been a few terrible years, but it's over. Instead, the insurance company sent out 64,000 notices to every single provider saying that I'd been excluded for the

two previous years. So every doctor had to read it, mandatory reading. Read that I'd been excluded and had practiced for those two years. So here I was a surgeon, going to the hospital, doing surgery when my license had been lifted two years earlier or my ability to do Medicare.

Huge damage to my reputation. So then I pursued it by one -- first of all, the judge, the federal judge who's in Washington and unfortunately, used to some bad behavior by the government found the government and the insurance company in contempt. Incredibly unusual outcome. And the, later, the federal government determined that I had done nothing wrong and in fact, the standard of the judge's determination was there was no basis for bringing an action against me in the first place. Huge standard. And awarded me attorney fees which all went to my attorney which, you know, we're all used to that. You know, they've got to be paid and my attorney did a good job.

I then sued the insurance company and the same agency, CMS, totally stood behind this insurance company; sent out their government attorneys and instead of -- thank you -- instead of just simply saying hey, we did something wrong. A federal judge said we did something wrong. A federal judge found us in contempt; maybe we should just kind of straighten this thing out. They continued to not do that. And the end result was I had to sue the insurance company; win; and then eventually get a very large settlement. This was 18 years later. And then after that, the attorneys for this insurance company, which were indemnified by the government, meaning that any bills they run up, any delay in the case, they're going to get all this money. So they had no interest in resolving it and every interest in making a huge amount of money. So the government agency, at some point, became concerned and pushed for the settlement.

But these same attorneys are still battling me and making it difficult for me to -- you know, I'd like to be a doctor. I've no interest in this stuff. And, you know, did it because I thought that it was important that all the people in this room and all the people in this country not be victim to this huge power that's available without the proper checks and balances of the governmental agencies that always back each other up. And, as a result, I've, you know -- okay, thanks.

**MR. OWENS:** Do you have any specific recommendation --

**DR. WAKSBERG:** Yeah.

**MR. OWENS:** -- for [crosstalk] --

**DR. WAKSBERG:** Yeah, I'm sorry. Let me make it real brief. Center for Medicare Services, first and foremost, needs to look in any and all cases where doctors were harmed over these last years and make sure that their money, the taxpayer money, the taxpayer power, isn't used to harm good doctors but to get bad doctors. And there's plenty of bad doctors. So get them. That's the first thing.

I think the Department of Justice needs to, before they prosecute cases that end up costing the government a huge amount of money, and do huge damage to a citizen who was innocent. They have to have an independent doctor look at the behavior and decide whether to go after him. In my case, the only doctor this agency had was a general practitioner who was unlicensed and was a rubber stamp. So, obviously, that wasn't the kind of check and balance that we'd like in our own lives.

**MR. OWENS:** Thank you, sir.

**DR. WAKSBERG:** Oh, okay. Thank you very much.

**MS. KING:** Thank you. Now we'll take testimony from Cooke Sunoo and we'll have Fred--

**MR. ABEDIN:** [Inaudible] testimony says that MDA the only federal agency that's regularly charged with assisting minority business. In Los Angeles County, close to 40% of the minority business are Asian owned and there is no MBD special services for these Asians. The vast majority of Asian entrepreneurs have limited English [unintelligible] and there is no apparent Asian language [unintelligible] MBD in Los Angeles.

So this is the only testimony. And so this is a question of having English language interpreters and assisting in that and as [unintelligible] is help in Los Angeles [unintelligible]. So I think this will be addressed on some [background noise]. Thank you.

Yeah. The next one is Dr. Raj Dutt. He, who is not here, also. And also another medical practitioner, I suppose and his testimony is that the U.S., the Air Force, had awarded RDL, a company in the 8(a) program, the Air Force Office of Scientific [unintelligible] Research Program. This program was to administer the program. After three years, the program was re-completed and RDL won the program again. RDL informed the Air Force that cash flow could not be met since they came in by the Air Force through DC, 8(a), took months and the program necessary did millions of dollars paid out over a short period of time. The Air Force informed RDL to do advance billing but did not put this into the contract. This incident over 11 years ago resulted in the settlement of a whistleblower [unintelligible] settlement of nearly 5 million. The Air Force recently debarred the RDL and also that for the RDL starting the criminal case whereby the company exist to false statement and a \$400 fine.

The debarment of Dr. Dutt and who was never found to be at fault and the debarment of RDL is [unintelligible]. So this is a presentation for a reinstatement of and wrongdoing by the agency.

**MR. REYES:** I have a couple. The first one is from the American Textile Systems. And it says we are an 8(a) certified company. I would like to take this opportunity to bring your attention

to the unusually large financial burden that the audited financial statement requirement for the 8(a) program places upon us.

For many years now, we have been preparing reviewed financial statements from our CPA. Such reviewed financials are sufficient for the purposes of our bank with which we have large asset-based credit facility. I am certain our bank's financial exposure within our company would not allow reviewed financials unless they feel comfortable about their accuracy. The cost of a reviewed financial statement is approximately \$4,500 per year. A quotation we have from our CPA for an audited financial is \$45,000 per year.

As you can see, the difference is substantial. This differential is further magnified by the fact that we are in the industrial textile business. Ours is a commodity business which is characterized by low margins and high volumes. As a general rule of thumb, a business in our industry with a volume of 20 million will have gross dollar margins similar to a \$5 million business in another industry like, say, computer IT or contracting. We feel very strongly that the \$5 million cutoff for providing audited financials should be amended and increased to reflect the differences in gross margins between various industries.

Mandating our company to provide audited financials in order to maintain our 8(a) status will levy an untenable financial burden on our company. This, in turn, will cause us to be uncompetitive in our government and nongovernmental markets. I am certain such a consequence, albeit unintended, of your policy is not in the best interest of keeping small businesses competitive and growing. Thank you, Allan Nathan, President.

The second document is from Krikorian Marketing Group, Division of Calcon Enterprises, Inc. My concern is that the Armenian/American small business community is not recognized by the U.S. Federal Contracting as a minority. That's making it difficult to compete against other minority groups for federal contracts. We, that is, our Krikorian Marketing Group, is in the process of applying for various opportunities that are made to small business and minorities and do not have the advantage that others do.

The Armenian/American small business community is expanding in size and numbers in California, especially in Los Angeles County and Glendale, home of your U.S. SBA plus throughout the country. Armenian/Americans by nature are entrepreneurs while, here in Glendale, lots of various streets, Glendale Avenue, Glen Oaks Boulevard, San Fernando Boulevard lost their lease. Note and feel the vitality of small businesses and especially those in this region of the Armenian/Americans.

The Work Force Investment Board of Verdugo did a study on this in late 1999. Our Krikorian Marketing was able to acquire a contract with much difficulty with the State of California to participate

in the 2000 census count for targeting the Armenian, Russian, Arabic and Iranian, Middle Eastern populations in California. The County of Los Angeles Department of Health and others also recognized the importance of reaching these minority and mostly non-English speaking populations. This is not compliant to Los Angeles County but extends in our state to Fresno and San Francisco.

The United States of America, determined just so to bring democracy to the Middle East; should consider that it is equally as important to reach this population here on our shores and in our neighborhoods. The flow of positive information from our shores to extend families in these Middle Eastern countries that are home to Armenians, Russians, Jews, Arabs and Iranians would be positive.

As these populations are here in California, so they are in Dearborn, Michigan and throughout the major cities in the United States. It is time to include the Armenian/Americans as a recognized minority.

**MS. KING:** Thank you. The first one that I have is from Ezekiel Patton from Patton Energy Enterprises in Los Angeles. Patton Energy Enterprises, Inc. has attempted, on many occasions, to contact DLA, DES, CE Richmond on obtaining information on how they purchase their products with no real results. We would like to be part of the ones that receive faxed quotes as well as internet quotes. Also we would like to know how we can get products that they are procuring to be set aside as an 8(a) contract. The feeling we get is that being west of the beltway is a hindrance to obtaining contracts.

This one is from Helen Anderson, Rayvern Lighting Supply and Center for Small Business and the Environment. Small business energy efficiency; every single small business in the nation can profit by making its own workplace more energy efficient. According to the EPA's Energy Star, Small Business program, small firms can save between 20% and 30% on their energy bills through office [unintelligible] cost effective, efficiency upgrades. The job consists largely of installing the same few simple devices; programmable thermostats, for example, Over and over again, in millions of small business workplaces.

Now this energy efficiency option is of extraordinary importance when you stop to consider that small business now constitutes one half of the economy. This means we could make one half of the economy energy efficient in fairly short order and we can do it profitably, too. Imagine that.

What is needed is a mechanism that makes energy efficiency for small business as easy as falling off a log. Fortunately, one such mechanism exists called On Bill Financing. Using this approach, an electric utility offers energy efficiency upgrades to its small business customers and also offers to lend them money to pay for the upgrades.

The energy savings are used to pay back the loan so the monthly utility bill is no higher than it was before. When the loan is paid off, the small business owner's utility bill is significantly lower.

A good model is Small Business Energy Advantage, an Energy Star award winning program offered by United Illuminating, a small New England utility. UI has successfully fostered a high level of small business investment and new efficiency technologies by using On Bill Financing. Three investor owned utilities, Southern California Edison, Southern California Gas and San Diego Gas and Electric, Pacific Gas and Electric are now testing On Bill Financing. You can go to [smallbusinesscalifornia.org/energy.htm](http://smallbusinesscalifornia.org/energy.htm).

Recommendation regarding the SBA. Secure implementation of the all small business provisions contained in the Energy Policy Act of 2005. For example, the Act instructs EPA and SBA to establish, maintain and promote a small business energy clearing house. Also DOE was instructed to provide small businesses a national HVAC maintenance program. No discernable action has yet been taken on any of these provisions. New legislation should set deadlines for compliance and agency reporting.

Instruct SBA to prepare an energy strategy for small business and an agency plan for supporting that strategy. This plan should draw on expertise in other agencies of government and especially on that of the EPA's Energy Star Small Program. We recommend that SBA be required to execute a Memorandum of Understanding with Energy Star Small Business. Strengthen the capacity of small business development centers to help small businesses to become energy efficient. Develop specialized lending windows in SBA to alternative energy manufacturers, distributors and installation and service companies. SBA should establish lending programs geared towards small businesses who are facing increased energy bills, frequent loss of energy, electric power quality which causes loss of digital equipment in business. Create a tax for small business that purchase Energy Star equipment is already recommended by the National SBA.

Recommendations regarding SBIR; increase the present 2.5% set aside for SBIR to 3.5%. Create Congressionally mandated initiatives to make green technology a priority focus for SBIR.

Respectfully submitted, Helen Anderson.

And this last one was faxed in and I can't read it. It's so small. Good thing I bought these at the car wash the other day.

This is Pharmacist Planning Service, Inc., PPSI, Fred Mayer. Thank you for inviting me to testify to the U.S. SBA's Regulatory Fairness Forum for Small Business. I have been a practicing pharmacist for over 50 years, licensed in the State of California. I am also past President of the California Public Health Association. I would like to spend my time in responding to the difficulties and

problems that community pharmacists are having with the Medicare Part D program as follows.

One of the most glaring problems of the Medicare Modernization Act is the failure to have uniform standards for pharmacy [background noise]. Pharmacy practice for measuring quality and access to pharmacy services was adopted January 24<sup>th</sup>, 1997 by CMS. Formulary development, quality and MMA program is in dire need of having a universal pharmacy practice standards for Medicare Part D. PPSI sees illegal activity of PBMs withholding information.

Since the MMA has been privatized with no standards, we see MedCo, one of the largest PBMs, paying \$155 million fines to settle fraud kickback charges and illegal switching of drugs. For example, Dr. Graham of the FDA stated that since most of the PMBs and PDPs make their money from rebates and kickbacks and formularies, Crestor has now been put on many of the MMA formularies even though Dr. Graham said that it results in muscle destroying side effects, Rhabdomyolysis and acute renal and kidney failure. One of the top four TCRS PMB now has Crestor as preferred brand.

The number one problem that needs to be solved immediately is the lack of data and transparency which is now required under MMA. We are trying to fix this lack of transparency with the enclosed federal registry to support CMS's effort to make Part D data available for research. For example, Dr. David Graham of the FDA said at our APHA annual meeting, five widely used drugs are called unsafe and should be off the market. These listed drugs are Accutane Beckstra, now off the market, Crestor, Meridia and Steribin. What is needed is evidence based medicines similar to what used to be pronounced by P&T Committees and their company formularies. The oversight of this committee should be done by CMS.

Finally, MMA must have a simple process in order to get medically needed prescription drugs in a timely manner, similar to the old Medical treatment authorization requests.

To summarize, we need to do the following. One, adopt standards of practice for the pharmacy profession that has already been done but not implemented. Two, give CMS the necessary power for oversight which is presently unavailable. Three, adopt some measures to get transparency over the PBM, PDP, HMO industry. Four, as used in the past, the Pharmacy and Therapeutic Committee is still the best process for applying evidence based medicine as the basis for selecting formulary drugs. Five, get FDA oversight of the PHRMAs so that they can regulate the industry. Six, pharmacy has gone from 2 billion prescriptions per year in 2003 to 3 billion per year in 2005; now to 4 billion in 2007. We need to fix the 30 day supply system at the local pharmacy level for maintenance drugs such as high blood pressure, diabetes, cholesterol lowering drugs, etcetera, which presently are not allowed by the PBM. Pharmacies need to be allowed to dispense a 90



day supply of maintenance medications. This will reduce prescriptions by 50% allowing pharmacists to consult, look at patient's history and monitor maintenance side effects along with drug interaction to reduce prescription drug errors and save consumer patients money on monthly co-pays.

Three key points; transparency for PBMs; price reduction in prescriptions; evidenced based medicine with a process to get medically necessary prescriptions.

Any other comments on any issues with federal agencies from the audience? Thank you everyone.

**MR. THOMPSON:** Yeah, all I'd like to add, is there any comments from any Associations represented here? Are there any Associations represented in the room? Well there were some, but --

**MR. ALVARADO:** Yeah, they've all been invited.

**MR. THOMPSON:** Yeah, I'm okay.

**MALE VOICE:** [Inaudible] have pretty good access so they don't have the kind of problems that --

**MR. OWENS:** Well you say that but, again, it goes to the point of outreach. And, of course, you all discovered that we're here through word of mouth or e-mail communications and also we looked for outreach in every possible way. I want to say thank you to all of you for being here. I mean, this is what it's all about. I'll also say it's great to get outside and listen to the concerns but that's when the work begins. And that's when we begin to focus on each of these comments with our staff and work with the federal agencies.

Some of the issues is very clear that it's legislative or it's a public policy issue for Congress. Other issues, it's contractual issues which we will work with Procurement Officials and agencies on your behalf or with their own regulatory structure at SBA.

So I want to say thank you very much. Please note we can reached, toll free, at (888) Reg Fair if you have any concern or our website which is included in your materials.

Thank you very much.

**MALE VOICE:** Is there some way to follow up a little bit. I know --

**MR. OWENS:** You were case correspondence--

**MALE VOICE:** Yes.

**MALE VOICE:** Not necessarily individually but I think a lot of people in here who didn't speak who have concerns and I think one of the things that we love about an agency that's going to stand up and make things better, is that they work hard and diligently--

**MR. OWENS:** Yes.

**MALE VOICE:** -- and as we all kind of get a sense --

**MR. OWENS:** Right.

**MALE VOICE:** -- [background noise] just like any other [background noise] know the results of your time [background noise]. Is there some way to maybe e-mail all of us a little bit of follow up on some of the positive results or if you couldn't solve something, that's good, too?

**MR. OWENS:** We'll work with [crosstalk]

**MALE VOICE:** A couple of hours here and get an idea--

**MR. OWENS:** Right.

**MALE VOICE:** -- of the good work you guys do.

**MR. OWENS:** Sure. Thank you.

**MALE VOICE:** Thank you very much.

**MR. OWENS:** Thank you.

**MALE VOICE:** Thank you for coming.

**OPERATOR:** Thank you.

[END TAPE LOSANGELESHEARING]